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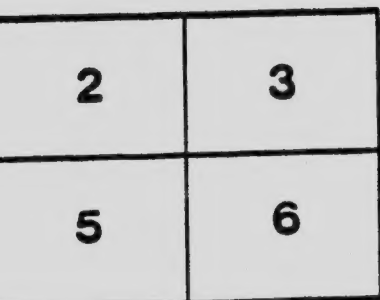
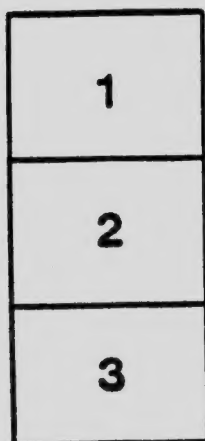
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THE WORKING OF FEDERAL INSTITUTIONS IN CANADA

A Lecture Delivered in the Convocation Hall of the University
of Toronto by Mr. Z. A. LASH, K.C., LL.D.,
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THE WORKING OF FEDERAL INSTITUTIONS IN CANADA

I notice that in the announcement of this lecture I am referred to as having been for some time the Deputy of the Minister of Justice. That was a long time ago, but the fact that I once occupied the office probably equips me to say things about the working of Federal Institutions in Canada, which I would not otherwise have been able to say, and the fact that, just nine years after the British North America Act (Canada's Constitution) came into force, I assumed that office and remained in it until 1882, enables me to speak of the workings of our Federal System from practically the beginning of that System. It took the first ten years for the country to find its bearings under the new federation, and for the Dominion and the Provinces to settle down to an understanding of their true constitutional relations. It also took that time for the Dominion and the Mother Country to settle, satisfactorily, certain debatable questions respecting their relations, and to make clear that the principles relating to Ministerial responsibility in Canada did not differ from those relating to similar responsibility in England. It is a pleasant memory that I was appointed Deputy Minister of Justice upon the recommendation of the Honourable Edward Blake, when he was Minister, and I am sure that the loyal sons and daughters of the University of Toronto take pride in the thought that he—who shed such lustre upon his Alma Mater, first as a graduate and later as Chancellor of the University, was to a large extent instrumental in settling some of the most important questions arising under our constitution, not only when he was Minister of Justice, but also when he, as one of the greatest lawyers at the Bar, took part in

our Courts and specially before the Judicial Committee of the Imperial Privy Council, in the argument of these questions.

To deal fully with the working of Federal Institutions in Canada would occupy more time than is at my disposal. Much detail would have to be gone into and the subject would become wearisome. There are, however, some general underlying principles which should be mentioned and borne in mind.

Conditions similar in principle to that of the United Kingdom.—The first recital in the B. N. A. Act declares that "the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into one Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a constitution similar in principle to that of the United Kingdom." These words "similar in principle to that of the United Kingdom" give the key for the opening of the meaning and the working out of the Act in many respects, especially with reference to those matters upon which the Act itself is silent. For instance,

Assent to bills.—Section 55 provides as follows:—

"Where a Bill passed by the Houses of the Parliament is presented to the Governor General for the Queen's assent, he shall declare, according to his discretion, but subject to the provisions of this Act and to Her Majesty's Instructions, either that he assents thereto, in the Queen's name, or that he withholds the Queen's assent, or that he reserves the Bill for the signification of the Queen's pleasure."

According to the wording of this section, the discretion of the Governor General to assent or to withhold assent or to reserve a bill is absolute, but that would not be in accordance with the principle of the constitution of the United Kingdom. Under that constitution, although the discretion of the Sovereign is in theory absolute, yet the assent to a bill passed by the two Houses of Parliament, is given or withheld in accordance with the advice of the Privy Council.

There has not been a case in England since the reign of Queen Anne where assent to such a bill has been withheld contrary to the advice of the Privy Council. Therefore, pursuant to that principle, the discretion of the Governor General under the B. N. A. Act is exercised in accordance with the advice of his Privy Council, but it was not until 1877 that the principle was fully established.

Governor General.—By sec. 9 of the B. N. A. Act the executive Government and authority of and over Canada is declared to be vested in the Sovereign. It is of course impracticable that the King should exercise that authority in person, as he exercises it in the United Kingdom, therefore as part of the Royal prerogative he appoints the Governor General to act for him, and in making that appointment the King can in theory, by the Commission or by instructions accompanying it, impose upon the Governor such limitations respecting his powers, or give him such instructions respecting the exercise of them, as the King may think expedient. In doing this he would, of course, act under the advice of the Imperial Privy Council. Now it is evident that by the terms of the Commission, or by the instructions (which the Governor would have to obey) the constitutional position of the Governor with respect to his Ministers might be made very different from the constitutional position of the King with respect to his Ministers, and the constitution of Canada might, in this way, be made or become not similar in principle to that of the United Kingdom. This is exactly what happened on the appointment of Canada's first Governor General.

Governor's Commission.—It is probable that the forms of commission and instructions issued to our Governors General from 1867 to Lord Dufferin's appointment in 1872, were taken from forms long in use in connection with the appointment of Colonial Gover-

nors, as they contained matters not suitable to a Federation like Canada, and they dealt with details which, in the light of our present position, seem to border on the ludicrous.

In the instructions which accompanied Lord Dufferin's Commission, he was, among other things, instructed as follows:—

"You are not to assent in Our name to any Bill of any of the classes hereinafter specified, that is to say:—

1. Any Bill for the divorce of persons joined together in holy matrimony.
2. Any Bill whereby any grant of land or money, or other donation or gratuity, may be made to yourself.
3. Any Bill whereby any paper or other currency may be made a legal tender, except the coin of the realm or other gold or silver coin.
4. Any Bill imposing differential duties.
5. Any Bill, the provisions of which shall appear inconsistent with obligations imposed upon Us by Treaty.
6. Any Bill interfering with the discipline or control of Our forces in Our said Dominion by land and sea.
7. Any Bill of an extraordinary nature and importance, whereby Our Prerogative or the rights and property of Our Subjects not residing in Our said Dominion, or the trade and shipping of the United Kingdom and its Dependencies, may be prejudiced.
8. Any Bill containing provisions to which Our assent has been once refused, or which has been disallowed by Us.

Unless such Bill shall contain a clause suspending the operation of such Bill until the signification in Our said Dominion of Our pleasure thereupon, or unless you shall have satisfied yourself that an urgent necessity exists, requiring that such Bill be brought into immediate operation, in which case you are authorized to assent in Our name to such Bill, unless the same shall be repugnant to the law of England or inconsistent with any obligations imposed on Us by Treaty. But you are to transmit to Us by the earliest opportunity the Bill so assented to, together with your reasons for assenting thereto."

These instructions (surprising to us now) had accompanied the Commissions issued since 1867.

The Commission vested in the Governor-General the exercise of the Royal prerogative of pardon, the instructions contained the following with respect to the pardon of an offender condemned to death:—"in

all such cases you are to decide, either to extend or to withhold a pardon or reprieve, according to your own deliberate judgment, whether the members of our said Privy Council concur therein or otherwise."

Lepine's Case.—One Lepine had been sentenced to death for the part which he took in the North-West rebellion. In 1875 Lord Dufferin, upon this authority, had reprieved Lepine, acting on his own judgment. It is true that he had consulted with his Ministers, but the consultation was to assist him in forming his own judgment. This case brought up very acutely the question of ministerial responsibility for the Governors' acts, and incidentally other questions arising under the Governor's Commission and instructions. At the instance of our Government Mr. Blake went to England and discussed the questions with the Government there.

Mr. Blake's memorandum.—A very important memorandum was submitted by him to the Colonial Secretary in July, 1876, in which he pointed out various objections to the terms of the Commission and instructions, particularly with reference to assenting or withholding assent to bills, and to the exercise of the prerogative of pardon where ministerial responsibility was excluded. I quote this extract from the memorandum:—

"The existing forms in the case of Canada have been felt for some time to be capable of amendment, for reasons which require that special consideration should be given to her position, and which render unsuitable for her the forms which may be eminently suited to some of the Colonies.

"Canada is not merely a Colony or a Province: she is a Dominion composed of an aggregate of seven large provinces federally united under an Imperial Charter, which expressly recites that her constitution is to be similar in principle to that of the United Kingdom. Nay, more, besides the powers with which she is invested over a large part of the affairs of the inhabitants of the several provinces, she enjoys absolute powers of legislation and administration over the people and territories of the north-west, out of which she has already created one province, and is empowered to create others, with representative institutions.

"These circumstances, together with the vastness of her area, the numbers of her free population, the character of the representative institutions and of the responsible Government which as citizens of the various provinces and of Canada her people have so long enjoyed, all point to the propriety of dealing with the question in hand in a manner very different from that which might be fitly adopted with reference to a single and comparatively small and young Colony.

"Besides the general spread of the principles of constitutional freedom, there has been, in reference to the Colonies, a recognised difference between their circumstances resulting in the application to those in a less advanced condition of a lesser measure of self-government, while others are said to be invested with 'the fullest freedom of political government;' and it may be fairly stated that there is no dependency of the British Crown which is entitled to so full an application of the principles of constitutional freedom as the Dominion of Canada."

Principle of ministerial responsibility.—The result was that the Commission and instructions were recast, the principles contended for by Mr. Blake were admitted and since then there has been no dispute with reference to ministerial responsibility in Canada, either with regard to assenting to Bills, the granting of pardons, or otherwise. The relations between the Lieutenant Governors of the Provinces and their ministers are governed by similar principles, and it may be said with confidence that, with regard to the great principle of ministerial responsibility, the working of Federal institutions in Canada has been satisfactory.

Division of legislative authority.—There is an important principle underlying the division of legislative authority between the Parliament of Canada and the Provincial Legislatures which should be explained and which has had much to do with the successful working of our Federation. The explanation will be made clearer and the reasons for this successful working will be made more apparent if I refer to the System of the Great Federation to our South.

In 1775 the thirteen colonies, which in 1776 declared their independence and threw off their allegiance to great Britain, sent delegates to a meeting or con-

gress to decide upon measures for joint action because of the revolution which was then pending; but there was not created any central body or authority having any general or legislative jurisdiction over the colonies or their people. Each colony claimed to be independent, but each acted with the others as against Great Britain and sent members to this joint congress. I quote from the Declaration of Independence:—

"We, therefore, the Representatives of the United States of America, in general congress assembled, do . . . solemnly publish and declare that these united colonies are and of right ought to be free and independent States . . . and that as free and independent States they have full power to levy war, conclude peace, contract alliances, establish commerce and to do all other acts and things which independent States may of right do."

In 1778 Articles of Confederation were agreed to by a majority of the thirteen, and subsequently ratified by them all. The purpose of these articles was the formation of a league of friendship for common defence and mutual welfare, and so jealous were the States of their rights that the first article after the one declaring the name of the Confederacy was in these words:—

"Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the Thirteen States in congress assembled."

Constitution of U. S. A. compared.—When the present constitution of the United States was discussed, it was by men who represented separate States and who were jealous of their rights and careful to guard them. Some far-seeing minds among them doubtless had visions of their great future, but in the then condition of the world's trade, before the wonderful power of harnessed steam had been discovered and when the commercial uses of electricity were unknown, when communication between the different parts of the country was difficult and tedious, when there were no railways or other modern means of transportation, when the total population of the thirteen States was

only about 3,000,000, and when they occupied only a fringe (comparatively speaking) along the Atlantic coast, it is not to be wondered at that in framing their constitution the conditions of the 19th and 20th centuries could not be foreseen, or, if foreseen by some, could not be provided for—provided *against* would probably be the better phrase. When, therefore, as representatives of independent States, they met to discuss a federal union, the natural tendency was to look at the question from the points of view of the States themselves. The result was a constitution granting to the Union such specified powers only as then seemed necessary to the schemes of federation and leaving reserved to the States (subject to some specified limitations) the whole balance of power which as independent States they then claimed to possess.

The present constitution, signed in 1787, did not make express provision on this head. Express provision was unnecessary; but to remove any possible doubt it was amended in 1789 in these words:—

“The powers not delegated to the United States by the constitution nor prohibited by it to the States, are reserved to the States respectively or to the people.”

Conditions in the United States.—Since 1787 the fringe along the Atlantic coast has been extended from the Atlantic to the Pacific, and from the Gulf of Mexico and Mexico as it now is, to Canada. The population has increased from 3,000,000 to 100,000,000. Railways and telegraphs and telephones connect the West with the East, and the South with the North. Transportation and communication are now easier and more rapid between New York and San Francisco than they were in 1787 between New York and Philadelphia; and, so far as trade is concerned, the whole country from North to South and from East to West is practically one.

Conditions in Canada.—Contrast the position of the thirteen States in 1787 with that of the three

Colonies which in 1867 became federated as the Dominion of Canada, viz.: the Province of Canada—then Upper and Lower Canada, but united by a Legislative Union—the Province of New Brunswick, and the Province of Nova Scotia. In the first place, they had not thrown off their allegiance to Great Britain, and they did not feel as did the thirteen Colonies, that having thrown off one power they would not set up another over them, even of their own making. They met to form a Union, which on its very face made provision for including the northern half of this continent. They had before them the example of the United States of America as a guide and as a warning. They knew something about the weaknesses of that constitution, and they knew the strong points of the constitution of Great Britain. They knew the effect upon trade of railways and telegraphs and modern means of transportation and communication. They did not come to discuss a union as independent States anxious to retain all their sovereign powers and to give to the new Dominion such powers only as seemed necessary to the scheme, reserving to themselves all balance of power, but they met to form a union which would in the near future possess and govern Canada from coast to coast, and which would have to deal with the problems of Empire and solve difficulties which had confronted the United States. Like the United States they decided upon a Federal Union, creating a central legislative and executive power, and creating Provinces which would control their local affairs, but, unlike the United States, they conferred upon the Dominion general powers to make laws for the “peace, order and good government of Canada,” and carved out of this general power certain specified powers which they conferred upon the Provinces.

Difference in principle between U. S. A. Federation and B. N. A. Act.—The great difference in principle between the United States and the Canadian federation is that in the United States the federal

authority has only specified powers, the whole balance being possessed by the States, whereas in Canada the Provinces have the specified powers and the whole balance is possessed by the Dominion.

The reasons for the formation of our Dominion and the confidence in its great future extension and development guided the framers of our constitution to entrust to the Federal Parliament a full measure of authority over those subjects which seemed most to affect the people as a whole, and to confer upon the Provinces a full measure of authority over those subjects which seemed most to affect the people of a Province as a Province. I need only say with respect to the provincial powers that they have proved sufficient for all practical local purposes, but I will, I am sure, be pardoned if I contrast the working of some of our Federal powers with the working of the Federal powers of the United States over the same subjects. I do so simply to illustrate our constitution and not to belittle that of our neighbours.

Four illustrations.—I shall illustrate by four subjects which are of general interest, viz. — Trade, Transportation, The Criminal Law, Marriage and Divorce. There are others, but time will not admit of illustrations from them.

In the United States the specified jurisdiction over trade is conferred upon the federal body in these words: "To regulate commerce with foreign nations and among the several States and with the Indian tribes." In Canada it belongs to the Dominion under the general grant, because it has not been conferred upon the Provinces; but for greater certainty and not so as to limit the general grant the Act specially declares that the legislative authority of Canada includes "the regulation of trade and commerce."

In the United States the general Criminal Law comes under the jurisdiction of the States because it has not been specially granted to the central auth-

ority; so also do "Marriage and Divorce," whereas in Canada these subjects belong to the Dominion because they have not been specifically granted to the Province, and, "for greater certainty," they are named as part of the Dominion jurisdiction.

Trade Transportation.—Take the subject of trade, and of transportation which is so intimately connected with it. It does not require much consideration to see that to regulate efficiently the trade of a country the size of Canada or the United States, where the question of transportation and freight rates is of such vital importance, where discrimination may enrich one industry or section and ruin another, and where huge combinations may practically monopolize the necessities of life, both in foods and manufactures, there should be one general legislative power capable of dealing with all the important questions which are involved. In Canada we have such power in the Dominion Parliament. In the United States the power which Congress possesses is confined to that species of commerce which is with foreign countries, among the several States and with the Indian tribes. This power is far short of what is required to cope successfully with the evils connected with trade and transportation which have grown up in the States. Attempts to cope with them have been made by Congress, but so far they have been only partially successful, owing, I believe, mainly to the difficulty, if not the impossibility, of framing effective laws because of the defective jurisdiction which is vested in Congress. Each State has power to regulate trade and transportation within its own borders. It is, in fact, only by implication that Congress has any jurisdiction over State railways, and this implied jurisdiction extends only so far as it can be said to be a regulation of commerce among the several States or with foreign nations.

With respect to trade which begins and ends within a State, congress is practically powerless. 'Tis true that our Provinces, like the various States, have

power to incorporate railways to operate in the Province, and to regulate their tariffs and their business and to establish commissions for that purpose, but this power is contained in the grant of legislative authority over "local works and undertakings" and "the incorporation of companies with Provincial objects." To complete the jurisdiction of the Dominion over such local works and undertakings express power is vested in the Parliament of Canada to declare a local work or undertaking to be for the general advantage of Canada or of any two or more of the Provinces, and upon such declaration being made, Parliament has jurisdiction over it. No such power is vested in Congress with respect to work within a State. Bear in mind, too, that in Canada the power to regulate trade and commerce is vested in the Dominion Parliament and not in the Provinces.

With respect, therefore, to the two great subjects of Trade and Transportation, the Parliament of Canada has ample power to pass efficient laws. This power has been exercised already in important instances such as the act creating an all powerful Railway Commission and the Act relating to the investigation of injurious trade combinations. Clear power exists to make such amendments and additions to these Acts as the public interests may from time to time require.

Criminal Law.—Turn now to Criminal Law. In Canada, complete jurisdiction over it and over the procedure in criminal matters is vested in the Dominion Parliament, whereas in the United States each State possesses this power, with the result that their criminal laws and procedure differ, and differ widely in some instances, not only as to what constitutes a crime but as to the trial of the offender and his punishment.

We have not in Canada the delays and perversions of justice which are constantly in evidence in the States in connection with criminal trials, particularly

where the rights or jurisdiction of different States intervene. Our criminal procedure is prompt and sure, and there is but one procedure for the whole of Canada. Crime does not go unpunished for want of jurisdiction, or because of conflicting jurisdictions, and no lynchings, because the power of the law fails, take place. No one can say of Canada, as President Taft felt constrained to say publicly of the United States, "I grieve for my country to say that the administration of criminal law in all the States of this Union (there may be one or two exceptions) is a disgrace to our civilization."

I firmly believe that, if the United States constitution had granted to the central authority exclusive power over criminal law and procedure, Congress would have enacted such laws, applying to the whole country, as would have gone far to obviate the delays and perversions of justice and lynchings, and to make it impossible for any President of that great nation to utter the lament I have quoted.

Marriage and Divorce. — Take the subject of "Marriage and Divorce." In the United States each State has full jurisdiction over it. In Canada the jurisdiction is vested in the Dominion Parliament. The Provinces have authority over "the solemnization of marriage in the Province" only. As with the administration of criminal justice, we have not in Canada the scandals and disgrace which prevail in many of the States in relation to marriage and divorce, especially divorce. The conditions which there prevail and which are a humiliation to their right-thinking people are not possible in Canada. Polygamy could never be recognized or encouraged by Canadian law. The sacredness of the marriage tie could never be treated with such levity as is the case in some of the States. Can there be any doubt that over a subject so vital to the continued well-being of a people, the central authority, which represents all the people and not merely a State or Province,

should have the jurisdiction? As in the case of criminal law and procedure, I firmly believe that if the United States constitution had granted to the centre authority exclusive power over marriage and divorce Congress would have enacted such laws, applicable to the whole country, as would have prevented that special blot which now blackens the most sacred side of their social life.

Banking.—I could illustrate with other subjects for instance, I would like to explain the differences between the United States constitution and ours relating to banking, but to do so would occupy too much of the time allowed. I can only assert my belief that if Congress had possessed from the beginning the same complete legislative authority over this subject, extending over the whole of their country, as is possessed by the Dominion Parliament, extending over the whole of Canada, they would have been better equipped to deal efficiently with their banking system, and to remedy or even prevent the evils which have been associated with it. They could have created one uniform system for the whole country. As it is, each State has power to create banks and pass laws respecting their business, so that one uniform system is now practically impossible. In Canada, the Dominion Parliament has complete and exclusive authority over "banking, the incorporation of banks, and the issue of paper money." I am convinced that, had there been in Canada a divided jurisdiction over this subject, it would not have been possible to create and continue and improve from time to time, the Canadian banking system, which has done and is doing so much for the welfare and development of our country.

It is not necessary to make any criticism respecting the wisdom or unwisdom of the exercise, by Federal or Provincial jurisdictions, of the powers conferred upon them. Very few measures meet with unanimous approval. The successful working of Fed-

eral institutions must, in the last analysis, depend upon the powers conferred. If the power exists, the fact that it is made use of unwisely may for a time be detrimental to the true interests of the people, but the same power which enacts can amend and repeal. The constitution of Canada rests upon the Dominion and the Provinces full powers of self-government with respect to all matters in so far as such powers can be exercised by a people not having the status of a Sovereign State. With respect to the division of those powers between the Dominion and the Provinces there have been no expressions of dissatisfaction worth mentioning and in this respect our people are contented with the Canadian Constitution and with the way it has worked.

Disallowance.—Section 56 of the B. N. A. Act provides that if the Queen in Council, within two years after the receipt by the Secretary of State of a Bill assented to by the Governor General, thinks fit to disallow the Act, such disallowance being signified by proclamation shall annul the Act from and after the day of such signification. This section is made applicable to Acts of the Provincial Legislature, and the power of disallowance is vested in the Governor General within one year after the receipt of the Act from the Lieutenant Governor of the Province. This is another illustration that, according to the wording of the section, the discretion of the Governor General to disallow an Act of a Provincial Legislature is absolute, but, as already explained, the principles of ministerial responsibility applies and the Governor General must act upon the advice of his Ministers.

Since the changes were made in the Commission and instructions to the Governor General which I have already explained, the principles under which the power of disallowance of Dominion Statutes vested in the King in Council should be exercised have practically limited it to cases in which Dominion Imperial interests are involved. As the British Government

and the Canadian Government have for a number of years kept in close touch with respect to Imperial interests, our Government is careful to see that no Act is passed by Parliament which would be so objectionable to the Imperial authorities as to call for the exercise of the power of disallowance. The relations between the two Governments are likely to be even closer in the future, and no fault will probably be found by the people of Canada with respect to the working of our constitution in connection with this power.

An explanation of the views upon the power of disallowance of Provincial statutes which prevailed in the early years, and of the changes which were made in later years, will be interesting.

Earlier and later views as to disallowance.—For a number of years after Confederation, it was considered by the Dominion Government that this power of disallowance should be exercised if the Provincial Act were unjust or oppressive—*ex gr.* if it took away vested rights without compensation, or impaired obligations under contract, or if it, in the opinion of the Dominion Government, were beyond the powers of the Legislature, or infringed upon Dominion or Imperial interests. These principles were acted upon and Provincial Acts were disallowed in accordance with them. Protests from the Provinces arose, and they gradually became so emphatic that the Dominion Government was compelled to take notice of them. They were based upon the ground that the autonomy of the Provinces was being interfered with respecting matters over which the Provinces claimed exclusive jurisdiction. It is not necessary to explain the process through which the subject passed between 1868 and 1908. In 1908, a report to the Governor General in Council made by the Minister of Justice (Sir Allen Aylesworth) and approved by the Governor-General, contained these words:—

"It is not intended by the British North America Act that the power of disallowance shall be exercised for the purpose of an-

nulling provincial legislation, even though your Excellency's Ministers consider the legislation unjust or oppressive or in conflict with recognized legal principles, so long as such legislation is within the power of the Provincial Legislature to enact it."

During the last nine years no provincial Act has been disallowed, for reasons contrary to this conclusion, but, while declining to recommend the disallowance of a certain provincial Act, the present Minister of Justice, Mr. Doherty, in 1912 made a report to the Governor General in Council, which was approved by the Governor, in which he said:—

"The undersigned entertains no doubt, however, that the power is constitutionally capable of exercise and may on occasion be properly invoked for the purpose of preventing, not inconsistently with the public interest, irreparable injustice or undue interference with private rights or property through the operation of local statutes *intra vires* of the Legislatures."

Referring to the disallowance of a provincial Act on the ground that it was *ultra vires*, or beyond the powers of the Legislature, the same Minister of Justice (Sir Allen Aylesworth) who in 1908 expressed the view above quoted, reported in 1911 as follows:—

"It is the duty of your Excellency's Government when persuaded by authority, or upon due consideration that a Provincial enactment is *ultra vires* of the Legislature to see that the public interest does not suffer by an attempt to sanction locally laws which can derive their authority only from the Parliament. . . . Great confusion and hardship may result from a statutory corporation carrying on a trust or investment business in excess of its corporate powers."

The Government being of opinion that the act reported upon was *ultra vires*, it was disallowed.

The freedom of the Dominion Government to disallow an act which would adversely affect Dominion or Imperial interests has not been given up. Differences of opinion might arise as to whether or not an act did adversely affect those interests, the responsibility of deciding and the right to decide would fall to the Dominion.

This explanation of the power of disallowance and the principles upon which it has been exercised shows how, in this respect, our constitution has worked.

Whether the working be for good or for evil, and whether or not the general credit and good name of the Provinces or of Canada have been prejudiced by certain acts of Provincial Legislatures, which have not been disallowed, is a question upon which sharp differences of opinion have arisen.

With respect to the specified subjects over which the Parliament of Canada and the Provincial Legislatures respectively are given legislative authority, the power in each case conferred is declared to be "exclusive"—that is to say that neither can legislate upon matters exclusively assigned to the other. This is an important principle and, on the surface, it would look as if the legislative powers of the Dominion and the Provinces were separated by cast-iron fences, through which neither could break, and it was so contended in some of the earlier cases which came before the Courts. However, the good sense and breadth of view of the Courts, and especially of the Judicial Committee of the Imperial Privy Council (our final Court of Appeal) have established certain principles which have done much to promote the smooth working of our Federal institutions; for example:—Among the matters assigned exclusively to the Provinces is

"The administration of justice in the Province including the constitution, maintenance and organization of Provincial Courts both of civil and criminal jurisdiction and including procedure in civil matters in those Courts,"

and among the matters assigned exclusively to the Dominion is—

"The establishment of Courts for the better administration of the laws of Canada."

It was contended that Parliament could not confer upon a Provincial Court jurisdiction to try questions relating to Dominion matters, (for example, Dominion elections), and could not prescribe the procedure in respect of such matters (for example controverted election cases)—the argument being that to do so would be to legislate upon the constitution of, and the procedure in, a court the exclusive legislative auth-

ority over which is vested in the Province. The Courts, however, have decided in numerous cases that a Dominion Statute upon a matter coming within the legislative authority of Parliament may properly make use of Provincial Courts and judges and other provincial machinery to carry out and enforce its provisions. The far-reaching principle involved in these decisions has proven to be of the highest importance in the smooth and successful working out of our constitution. It has enabled the Dominion in various instances to make use of the existing Provincial machinery in aid of a Dominion enactment. Had the contrary principle been established great inconvenience and much unnecessary expense would have resulted; for instance, for the trial in Court of Dominion controverted election cases it would have been necessary to establish a Dominion Court with all the necessary machinery, including judges, sheriffs and other officers or to enlarge the jurisdiction and machinery of the Exchequer Court of Canada or other existing Dominion Court. "Bankruptcy and Insolvency" are among the matters exclusively assigned to the Dominion, and Parliament has passed laws respecting bankruptcy and insolvency of persons and corporations and has provided for the winding-up of companies; the machinery of existing Provincial Courts has been freely made use of by such laws, and jurisdiction has been conferred upon them and procedure provided for. Many other instances involving this convenient principle could be cited, they are constantly arising and affording evidence of the practical wisdom upon which the principle was established. The act respecting the election of members of the House of Commons involves the same principle. It makes use of provincial voters' lists and declares that—

"For the purposes of any Dominion election held within a Province the voters' lists shall, except as herein otherwise provided . . . be those prepared under the laws of that Province for the purposes of Provincial elections."

It is made the duty of the custodian of the lists (a Provincial officer) to certify a copy and transmit it to the proper Dominion officer. The polling places used at Provincial elections are made the polling places for Dominion elections. The judge of the County Court is made use of for recounting ballots and, should he neglect or refuse to perform the duties cast upon him, the act provides that any party aggrieved may apply to a Superior Court or judge for an order compelling the County judge to proceed, and the procedure upon this application is provided for. In other ways the Provincial machinery, including judges, Courts and officers, is made use of and enormous expenditure obviated. After the Ontario Act giving votes to women has been finally passed and as the Dominion election law now stands, women, whose names are on the Ontario Voters' lists, would be entitled to vote at Dominion elections. This affords a remarkable illustration of the interlocking of Dominion and Provincial jurisdictions and machinery all working together smoothly and in accordance with the spirit of the constitution. For a few years the Dominion Parliament provided a machinery of its own for the preparation of voters' lists for Dominion elections, but it was found so cumbersome and expensive that the law was repealed and the use of the Provincial machinery was again resorted to. The trial thus made affords cogent evidence that in this case the public interest is best served by the Dominion and Provincial machinery being worked together.

No Customs Duties between Provinces. — All articles of growth, produce or manufacture of any one of the Provinces are, by sec. 121 of the B. N. A. Act, admitted free into each of the other Provinces.

Admission of other Provinces.—Provisions are made for the admission into confederation of Newfoundland, Prince Edward Island, British Columbia, Ruperts Land and the North Western Territory;

under these provisions all but Newfoundland have been admitted. Doubts respecting the power of the Parliament of Canada to create out of Ruperts Land and the North Western Territory separate Provinces were removed by Imperial legislation and the Great Provinces of Manitoba, Saskatchewan and Alberta were created by that Parliament. The Yukon District has been organized, with a Government, Legislative Council, Courts and other machinery suitable for its purposes, and its transition into a full-fledged Province could take place without difficulty when the time is ripe for it. The remaining parts of Ruperts Land and the North Western Territory are being looked after and administered under the authority of the Parliament and Government of Canada.

Object of Confederation Attained.—The object of the B. N. A. Act has been attained. Out of scattered Provinces and territories disconnected in some cases by many hundreds of miles of unsettled country, there has been created the great Dominion of Canada, embracing the North half of this continent, organized, prosperous and law-abiding, successfully governing herself in all things affecting her welfare, except those matters which are Empire Foreign Affairs. Able to take, and now taking, her full share in the present war in defence of the Empire and in defence of Humanity, she has established her right and proven her ability to take part in the Empire's Foreign Affairs and in "the great policies and questions which concern and govern the issues of peace and war."

